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April 25, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Re: In the Matter of Federal Communications Commission,
MM Docket number 93-25 and FCC 97-24.

Dear Secretary Caton,

Enclosed herewith are the original and four copies of the comments from Dominion Video Satellite, Inc., a first round DBS permittee, in response to the FCC, International Bureau's request for comments on the implementation of Section 25 of the 1992 Cable Act for satellite DBS transmission.

Sincerely,

Dominion Video Satellite, Inc.

Randy Swanson, General Counsel

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3050 North Horseshoe Drive Suite 290, Naples, Fl. 34104 (941)403-9130

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

Comments of:	)	
	)	
Dominion Video Satellite, Inc.	)	MM Docket 93-25
	)	
Regarding implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992.	)	
	)	
Direct Broadcast Satellite Public Service Obligations	)	
	)	

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April 25, 1997

Introduction

Dominion Video Satellite, Inc. is primarily committed to developing a national and international DBS service that focuses on educational, children's, and religious programming. Dominion has already initiated six (6) channels of DBS religious programming and three (3) channels of religious audio programming and has done substantial development in distance learning, fully accredited collage and university educational programming, and children's programming. Over fifty percent (50%) of all digital channels to be ultimately offered by Dominion will carry non-commercial children's programming, distance learning, and educational programming.

It is anticipated that the Commission will develop an appropriate and comprehensive policy in the educational arena, however, Dominion is particularly concerned that due to the limited number of DBS providers in this genre of programming, that religious programming may be overlooked.

Comments

The following comments address, in particular, paragraph 44 of MM 93-25 wherein the Commission requests comments on the definition of "public interest non-commercial programming of an educational or informational nature."

A particular category of programming that should be afforded the distinction of "public interest" for purposes of Section 25 of the 1992 Cable Act is religious programming. Religious

programming is predominately created by organizations that are nonprofit under the United States Internal Revenue Service Code 501(c)(3). This nonprofit tax code identifies such organizations to have been "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes,..."

The historical underpinnings of these nonprofit classifications suggest that these categories were afforded the benefit of tax exemption due to the public benefit they were deemed to have brought to the American public. Bruce R. Hopkins, the recognized authority on tax-exempt organizations, has stated in his book "The Law of Tax-exempt Organizations," Sixth Edition, that the "Independent Sector," in contrast to the "governmental sector" or the "for profit sector," has fundamental roots in benefit to society and the public interest.

One of the modern day exponents of the role and value of the independent sector in the United States is John W. Gardner, former Secretary of Health, Education, and Welfare, founder of Common Cause, and one of the founders of Independent Sector. Mr. Gardner has written that, "[t]he area of our national life encompassed by the deduction for religious, scientific, educational, and charitable organizations lies at the very heart of our intellectual and spiritual strivings as a people, at the very heart of our feeling about one another and about our joint life." Gardner, "Bureaucracy vs. The Private Sector," 212 Current 17-18 (May 1979).

Mr. Hopkins goes on to say, "Consequently, it is erroneous to regard tax exemption ... as anything other than a reflection of this larger doctrine. Congress is not merely "giving" eligible non-profit organizations any "benefits"; the exemption from taxation ... is not a "loophole," a "preference." or a "subsidy" -- it is not really an "indirect appropriation." Rather, the various Internal Revenue Code provisions comprising the tax exemption system exist basically as a

reflection of the affirmative policy of American government to not inhibit by taxation the beneficial activities of qualified tax-exempt organizations acting in community and other public interests." Hopkins, "The Law of Tax-exempt Organizations, Sixth Edition," 1979 at page 16.

The United States supreme Court has recognized the public benefit derived from those organizations which are afforded tax-exempt status under the Internal Revenue Code. The Court stated, "[e]vidently the exemption [was] made in recognition of the benefit which the public derives from corporate activities of the class named, and [was] was intended to aid them when not conducted for private gain." Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578,581 (1924).

Based on the clear authority and recognition that religious activity is considered coequal with the public interest of educational activities, it is a logical conclusion that religious programming should be considered coequal with the public interest of educational programming for purposes of the broadcasting rules and regulations.

Additionally, much of the religious programming on television today is of a direct instructional nature in the form of church sermons, Bible studies, religious catechisms for various religious sects, and inspirational and educational music programs.

Accordingly, the commission should be explicit to identify "religious programming" in the definition of the type of programming that would meet the criteria for "public interest" programming to be recognized in the public interest set aside under Section 25 (b)(1) of the 1992 Cable Act.

In the case of determining what is "non-commercial" the tax exempt laws, rules and case law regarding "related" and "unrelated" business activities may be instructive. The Internal

Revenue Service has developed a sophisticated set of guidelines to determine whether activities of a nonprofit organization are in furtherance of their exempt purpose or whether they constitute "unrelated business" activities.

Many programs that are produced for educational or religious purposes have advertisements for the sale of products or for donations. The revenue producing nature of such programming should not convert such programming into commercial programming that would be excluded from the public interest criteria. Such advertisements should not be considered as "commercial purposes" if they in fact are products or services which are directly related to the charitable, religious or educational purposes of the entity creating the program or the program content itself. For instance, an educational program that offers a VHS videotape of the program for sale during the program broadcast should not be considered as a commercial program. A religious program which has an offer for sermon tapes, Bibles, donations, and the like should not be considered commercial if the products or fund solicitations are directly related to the religious purposes of the entity creating the programming. The commercial nature of the program would only derive from advertising included in the program that was wholly unrelated to the purpose of the entity producing the program or the purpose of the program. Thus, the determination of commercial versus non-commercial programming should be linked to the Internal Revenue Code distinctions of related or unrelated business activities.

DBS satellite broadcasting is a subscription based service. Every person legally receiving a DBS signal must pay some amount for access to the particular signal. Accordingly, the deriving of revenue from the programming cannot be a criteria for identifying programming that meets the

public interest criteria. In a sense, all DBS programming has a revenue generating element attached to it by virtue of its inclusion in DBS. With the anticipated explosion of a plethora of various educational, distance learning, vocational training, and other educational broadcasting, all of which will have highly varied models of revenue production, the public interest criteria must focus on the content of the programming rather than whether it has a commercial revenue generating model of distribution.

In conclusion, this commenter believes that it is critically important that the definition of "public interest programming" be expressly defined to include "religious programming" as separate and distinct from educational programming similarly to those distinctions made under the Internal Revenue Code for nonprofit organizations. Additionally, the commerciality of educational and religious broadcasting should be evaluated on the basis of whether advertising during the program clearly furthers the purpose and intent of the public interest broadcast or of the nonprofit organization creating the programming, and not on the basis of payment for subscription services generally, pay per view, or the mere fact that revenues are derived from the programming.

Respectfully submitted,

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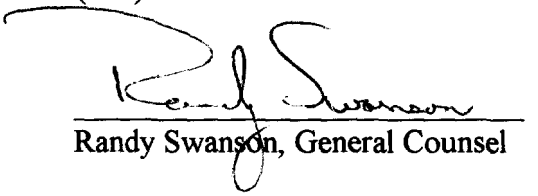

Randy Swanson, General Counsel